

MINUTES
BOARD OF OSTEOPATHIC EXAMINATION
March 7, 2012

A regular meeting of the Tennessee Board of Osteopathic Examination was held at the Health Related Boards, 227 French Landing, Poplar Conference Room, Nashville, TN 37243.

Members Present: Jack G. Pettigrew, D.O.
 Paul G. Smith, Jr., D.O.
 Jill Robinson, D.O.
 Donald H. Polk, D.O.
 Karen R. Shepherd, D.O.

Members Absent: R. Fletcher Lance, Consumer Member

Staff Present: Rosemarie Otto, Executive Director
 Marsha Arnold, Unit Manager
 Andrea Huddleston, Advisory Attorney
 Kimberly Hodge, Administrator

The Board convened at 9:10 a.m. with Dr. Jill Robinson (President) presiding. Dr. Robinson determined that a quorum was present.

Minutes

Dr. Pettigrew made a motion to approve the minutes from the November 2, 2011 meeting of the Board. Dr. Shepherd seconded the motion. The motion carried

Applicant Interview

Deborah L. Kaufman, DO – Dr. Kaufman was asked to appear before the Board to discuss a 2004 malpractice action for failure to diagnose and therefore, allegedly violating a minimum standard of care. After a brief explanation by Dr. Kaufman and a discussion by the Board, Dr. Polk made a motion to approve her application. Dr. Smith seconded the motion. The motion carried.

Gayle H. Smith, DO – Dr. Smith was asked to appear before the Board to discuss her adverse action during training which resulted in probation, her non-completion of her residency, and the indication from her letter of recommendations that Dr. Smith was practicing in Kentucky without a state medical license. After a brief explanation by Dr. Smith, Dr. Polk and Dr. Smith suggested that she needed to complete a residency program and work on her skill and training deficiencies. After further discussion, Dr. Smith decided to withdraw her application.

Carl J. Kubek, DO – Dr. Kubeck was asked to appear before the Board to discuss his multiple malpractice cases and to review his work history. After a brief explanation by Dr. Kubek and a

discussion by the Board, Dr. Smith made a motion to approve his application. Dr. Polk seconded the motion. The motion carried.

Manager's Report

Between October 1, 2011 and February 29, 2012 there were 40 new osteopathic physician applications received in the administrative office and 33 new licenses issued. Osteopathic physicians renewed online at a rate of 57%. The total number of active osteopathic licensees at the end of February was 999, active midwives 33, and osteopathic x-ray operators 16.

Financial Report

Ms. Otto reported that the Board continues to be self-sufficient. There was a discussion about reducing the Board's renewal fee by 20% from \$375.00 to \$300.00 so that the Board does not continue to accumulate a large surplus. Dr. Smith approved the motion to reduce the renewal fee by 20%. Dr. Shepherd seconded the motion. The motion carried. Ms. Huddleston will prepare all required documents for the rule making hearing for the reduction of renewal fees for the May 9, 2012 Osteopathic Meeting.

Office of General Counsel

Andrea Huddleston reported that as of March 1, 2012 there were no outstanding rule revisions or appeals pending in the Office of the Attorney General. The Office of General Counsel currently has 25 open disciplinary cases pending against 13 osteopathic physicians. Ms. Huddleston also reiterated Board member duties when evaluating conflicts of interest. Finally, there were two disciplinary matters scheduled to be presented to the Board.

Order of Compliance

Paul A. Brundage, D.O. License No. 1491- Dr. Brundage was present and was represented by his legal counsel Ernest Sykes. Dr. Brundage filed a petition for an order of compliance pursuant to a consent order issued by the Board on November 15, 2006, which placed Dr. Brundage's license on probation for a period of five (5) years. He was also required to maintain lifetime advocacy with the Tennessee Medical Foundation and pay all cost. Based on the affidavit of the Board's Disciplinary Coordinator, the Board finds that Dr. Brundage has satisfactorily complied with the requirements of the previous order. Dr. Smith made a motion to approve the order of compliance, which would lift the probation on Dr. Brundage license, with the stipulation that he maintain lifetime advocacy with the Tennessee Medical Foundation. Dr. Shepherd seconded the motion. The motion carried.

2012 Legislation

SB2191 - Drugs, Prescription - As introduced, prohibits pain management clinics and prescribers at such clinics from prescribing certain drugs to a patient in an amount that exceeds the drug manufacturer's recommended dosage. - Amends TCA Title 39; Title 53; Title 63 and Title 68.

Dr. Polk made a motion to support the bill. Dr. Pettigrew seconded the motion. The motion carried.

SB2275 - Medical Occupations - As introduced, defines the regulations physicians and those working under a physician's supervision must follow when performing cosmetic or aesthetic procedures or treatments. - Amends TCA Title 63. Dr. Pettigrew made a motion to take no position on the bill. Dr. Shepherd seconded the motion. The motion carried.

SB2353 - Physicians and Surgeons - As enacted, alters the definition of a physician in the Preferred Provider Organization Transparency Act to include chiropractic physicians, medical doctor or an osteopathic physician. - Amends TCA Section 56-60-102(10). Dr. Smith made a motion to oppose the bill. Dr. Pettigrew seconded the motion. The motion carried.

HB2391 - Drugs, Prescription - As introduced, enacts the "Tennessee Prescription Safety Act of 2012." - Amends TCA Title 53, Chapter 10, Part 3; Title 53, Chapter 11, Part 3; Title 53, Chapter 11, Part 4 and Title 63, Chapter 1, Part 3. Dr. Polk made a motion to support the amended bill relative to physicians checking the database. Dr. Pettigrew seconded the motion. The motion carried. Dr. Smith opposed the bill.

HB2549 - Physicians and Surgeons - As introduced, establishes requirements on certain health care providers when engaged in interventional pain management. - Amends TCA Title 63. Dr. Smith made a motion to oppose the bill. Dr. Polk seconded the motion. The motion carried.

HB2642 - Physicians and Surgeons - As introduced, clarifies that physicians must report injuries or wounds arising out of methamphetamine laboratory incidents to law enforcement; provides immunity from liability for good faith reports. - Amends TCA Title 38; Title 63 and Title 68. Dr. Smith made a motion to support the bill. Dr. Polk seconded the motion. The motion carried.

HB2672 - Medical Occupations - As introduced, prevents health care practitioners or facilities from asking a patient about gun ownership, possession or storage unless certain factors are present and prevents insurance companies from discriminating against an applicant or insured based upon gun ownership. - Amends TCA Title 56; Title 63 and Title 68. Dr. Polk made a motion to oppose the bill. Dr. Shepherd seconded the motion. The motion carried.

HB2684 - Medical Occupations - As introduced, provides immunity to medical doctor or osteopathic physician who makes a report to law enforcement regarding an employee's unauthorized use of the doctor or physician's DEA registration number to write prescriptions. - Amends TCA Title 63, Chapter 9 and Title 63, Chapter 6. Dr. Smith made a motion to support the bill. Dr. Pettigrew seconded the motion. The motion carried.

HB2701 - Drugs, Prescription - As introduced, requires a prescription issued by a physician in order to obtain products with immediate precursor of methamphetamine from a pharmacy. - Amends TCA Title 38; Title 39; Title 40 and Title 63. Dr. Smith made a motion to defer the bill to the Controlled Substance Data Base Advisory Committee. Dr. Shepherd seconded the motion. The motion carried.

HB2724 - Drugs, Prescription - As introduced, revises the list of prescribed medication for patients at a pain management clinic. - Amends TCA Title 63, Chapter 1. Dr. Shepherd made a motion to support the bill. Dr. Smith seconded the motion. The motion carried.

HB2801 - Physicians and Surgeons - As introduced, expands the board's authority to deny, suspend or revoke a license for any physicians supervising an unlicensed or non-physician performing hormone replacement therapy. - Amends TCA Title 63. Dr. Smith made a motion to take no position. Dr. Shepherd seconded the motion. The motion carried

HB2407 - Controlled Substances - As introduced, expands responsibility to report under "doctor shopping" laws; permits hospitals access to database for certain purposes and immunizes them from liability; requires photo identification for persons picking up prescriptions; allows federal law enforcement to access database without warrant; requires real-time access for law enforcement and pharmacists; requires pain clinics to be owned by Tennessee doctors or hospitals; penalizes interference with pharmacists' decisions to fill prescriptions; requires methadone clinics to query database. - Amends TCA Title 39, Chapter 17, Part 4; Title 53, Chapter 10, Part 3; Title 53, Chapter 11, Part 3; Section 53-11-402; Title 63, Chapter 1, Part 3; Title 63, Chapter 10, Part 2 and Title 71, Chapter 5, Part 26. Dr. Smith made a motion to defer this bill to the Controlled Substance Data Base Advisory Committee with the recommendation that Osteopathic Physicians be included in the language. Dr. Shepherd seconded the motion with the above recommendation. The motion carried.

SB2408 - Drugs, Prescription - As introduced, classifies willful failure to report information to the controlled substance database a misdemeanor criminal offense. - Amends TCA Section 53-10-307. Dr. Pettigrew made a motion to support the bill. Dr. Polk seconded the motion. The motion carried.

SB2531 - Controlled Substances - As introduced, requires health care practitioners who are authorized to prescribe controlled substances to query the controlled substance database concerning the prescription history of certain persons and to make appropriate reports. - Amends TCA Title 53 and Title 63. Dr. Smith made a motion to oppose the bill. Dr. Shepherd seconded the motion. The motion carried.

SB2680 - Health Care - As introduced extends grace period for renewing a certificate to operate a pain management clinic from 90 to 120 days from the expiration date of the former certificate. - Amends TCA Title 63, Chapter 1, Part 3. Dr. Shepherd made a motion to support the bill. Dr. Pettigrew seconded the motion. The motion carried.

SB2414 - Controlled Substances - As introduced, permits the commissioner of health or certain licensing boards to suspend on an emergency basis the license of a practitioner who is under state or federal indictment involving the sale or dispensing of controlled substances. - Amends TCA Title 63. Dr. Smith made a motion to oppose the bill. Dr. Shepherd seconded the motion. The motion carried.

SB2419 - Drugs, Prescription - As introduced, permits the commissioner of health or certain licensing boards to suspend on an emergency basis the license of a practitioner who is under any

state or federal indictment involving controlled substances. - Amends TCA Title 63. Dr. Smith made a motion to oppose the bill. Dr. Shepherd seconded the motion. The motion carried.

Agreed Order

Norman P. Neal, D.O. License No. 1117 – Dr. Neal was not present and was not represented by his legal counsel. Christopher M. Smith represented the Tennessee Department of Health and presented the agreed order. Dr. Neal entered into an Interim Consent Order with Georgia Composite Medical Board, providing for the suspension of his Georgia osteopathic license until the criminal charges against Dr. Neal are resolved. Dr. Neal was indicated by a Catoosa County, Georgia grand jury in an eight-count indictment for illegal possession of controlled substances and unlawful prescription of controlled substances. Dr. Neal does not admit or deny the facts concerning the Georgia criminal charges or license discipline, but agrees that the Board has grounds to suspend his Tennessee osteopathic license pending the resolution of the Georgia criminal charges and the related Georgia license suspension. The Tennessee agreed order mirrors the Georgia Composite Medical Board Order. Dr. Neal's Tennessee license is suspended, effective upon entry of the agreed order, pending the resolution of the criminal charges and license discipline in Georgia. Dr. Polk made a motion to approve the agreed order. Dr. Shepherd seconded the motion. The motion carried.

Office of Investigations

Juanita Stone informed the Board that there are 31 open complaints for osteopathic physicians in the Office of Investigations. Twenty (20) are currently being investigated, eight (8) are ready for review, and three (3) are currently on second review. There are currently no complaints pending relative to osteopathic x-ray.

Disciplinary Coordinator

Juanita Stone reported to the Board that there are currently thirteen (13) osteopathic physicians being monitored.

Review and Ratification of Licenses

Dr. Polk made a motion to approve all new Osteopathic licensees. Dr. Smith seconded the motion. The motion carried.

Dr. Polk made a motion to approve the Osteopathic re-instatement licensees. Dr. Smith seconded the motion. The motion carried.

Dr. Polk made a motion to approve all new Osteopathic X-ray licensees. Dr. Smith seconded the motion. The motion carried.

Dr. Polk made a motion to approve all new Midwifery licensees. Dr. Smith seconded the motion. The motion carried.

Telemedicine Application

Dr. Polk opened a discussion on amending the Board's telemedicine application to include more information. Dr. Polk suggested that board staff work on amending the application to gather information relative to work history, education, and post graduate training. After a brief discussion, Dr. Polk made a motion to approve revising the telemedicine application to include an applicant's work history, education, and post graduate training. Dr. Smith seconded the motion. The motion carried.

Osteopathic Operator X-Ray Continuing Medical Education Policy

Andrea Huddleston presented to the Board a policy relative to a Continuing Medical Education Policy for Osteopathic X-Ray Operators. Dr. Pettigrew made a motion to approve the CME policy. Dr. Shepherd seconded the motion. The motion carried.

Discuss & Approve FSMB Delegate

The Board suggested that Dr. Polk represent the Tennessee Board of Osteopathic Examination as a delegate at the FSMB annual meeting in Fort Worth, Texas, and that Mr. Lance be contacted regarding his availability to attend the meeting as well. Dr. Smith made a motion to designate Dr. Polk as their voting delegate and instructed board staff to attempt to contact Mr. Lance to determine his interest and/or availability regarding attending the FSMB annual meeting. Dr. Pettigrew seconded the motion. The motion carried.

Hormone Replacement Therapy

Andrea Huddleston presented a draft policy relative to Hormone Replacement Therapy policy. The policy was developed after passage of House Joint Resolution 104 which instructed several health-related boards to confer on form a consensus relative to the use of hormone replacement therapy. Dr. Shepherd represented the Board of Osteopathic Examination on the Task Force. After a brief discussion, Dr. Shepherd made a motion to approve the policy. Dr. Smith seconded the motion for the purpose of discussion. After discussion, Dr. Robinson called the question and all Board members voted to oppose the policy. The Board felt as though the policy intruded on physicians and instead should be put in place for bio equivalent hormone replacement therapy.

Pain management Clinic Registration

Ms. Otto advised the Board that there are currently over 200 registered pain management clinics located across Tennessee. Ms. Otto advised the Board that discussions are underway with the Department of Health to establish a method for enforcing the provisions of Tenn. Code Ann. Sect. 63-1-301, et seq. utilizing funds from the reserves of boards whose licensees have prescriptive authority and comprise the majority of pain clinic registrations.

Discussion

Dr. Polk recommended asking a representative from the Georgia Composite Board of Medicine to speak to the Board of Medical Examiners and the Board of Osteopathic Examination on telemedicine. He asked staff to work with the Board members as well as other State Boards to set up the presentation.

Dr. Polk made a motion to adjourn the meeting. Dr. Shepherd seconded the motion. The motion carried.

These minutes were ratified by the Board May 9, 2012.